IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 1433 OF 1983

Bank of Maharashtra. .. Plaintiffs.

vs.

M/s. Indian Produce &

Fertilizers & Ors. .. Defendants.

Mr. U.M. Mahajan i/by Divekar & Co.
for the plaintiffs.
Mr. D.K. Ghaisas for Defendants.

CORAM : S.U.KAMDAR, J.

DATE : 21st June, 2005.

P.C.

. The present suit is filed for recovery of a sum of Rs. 4,41,959.25 with interest thereon at the rate of 15% per annum from 16.6.1983 till payment. The suit has been filed by the plaintiff who is a banking corporation. By a letter dated 8.10.1975 the plaintiff sanctioned a packing credit facility of Rs. 3 lacs in favour of the defendant as well as bill discounting facility of Rs. 50,000/-. Under the terms and conditions of the said facility, interest was payable at the rate of minimum 11.5%

with 2.5% over and above the bank rate and in respect of the bill discounting facility the interest was payable at the rate of 16% with 7.5% over and above the bank rate. According to the plaintiffs, under the aforesaid two facilities, the plaintiffs have from time to time disbursed the amount. However, the defendants failed and neglected to repay the same on due dates of instalments. In view of the fact that the defendants were irregular in payment of the due amount and that the defendants stopped the business in or about September, 1982, the plaintiff ultimately by their advocate's letter dated 17.9.1982 called upon the defendants to make the aforesaid payments. Notice was issued on 17.9.1982 demanding the aforesaid amount. However, still the payment was not received. Thus, the plaintiffs filed the suit for the amount remaining outstanding at the foot of the aforesaid account which was jointly maintained and at the foot of the account there was an amount due and payable of rs. 4,41,959-25 as on 15.6.1982.

2. The suit as against defendant no. 1 which is the partnership firm and defendant no. 2 who is one of the partners of the 1st defendant has already been decreed. Defendant no. 3 is another partner of 1st defendant firm. Defendant no. 3 has filed a written statement inter alia disputing the liability

to make payment of the aforesaid dues. It has been contended by him that the suit firm has been dissolved on 30.6.1979 and thus, the defendant no. 3 is not concerned in any manner in respect of the said amount and thus not liable to make the aforesaid payment. The plaintiffs have filed two affidavits of evidence dated 15.6.2005 and 20.6.2005. The plaintiffs have also produced original documents in the present suit. The advocate appearing for defendant no. 3 states that he has no instructions in the matter as the defendant no. 3 has taken away papers long time back and he is not aware of whereabout of defendant no. 3. According to him, the defendant no. 3 is not available at the present address. In view of the aforesaid position, the suit is decreed as against defendant no. 3. There shall be a decree in favour of the plaintiffs and against the defendant no. 3 in the sum of Rs. 4,41,959-25 with further interest at the rate of 15% per annum from 16.6.1983 till payment and/or realisation. The said decree will be executable jointly and severally against defendant nos. 1, 2 and 3. Suit decreed accordingly.